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ORACLE AMERICA, INC.

21 UNITED STATES DISTRICT COURT  
22 NORTHERN DISTRICT OF CALIFORNIA  
23 SAN FRANCISCO DIVISION

24 ORACLE AMERICA, INC.  
25 Plaintiff,  
26 v.  
27 GOOGLE INC.  
28 Defendant.

Case No. CV 10-03561 WHA

**DECL. OF MATTHEW L. BUSH IN SUPPORT  
OF ORACLE'S RULE 59 MOTION FOR A  
NEW TRIAL**

Dept.: Courtroom 8, 19th Floor  
Judge: Honorable William Alsup

1 I, Matthew L. Bush, declare and state as follows:

2 1. I am a member of the bar of the State of New York, admitted to practice before  
3 this Court, and an associate with the law firm of Orrick, Herrington & Sutcliffe LLP (“Orrick”),  
4 attorneys of record for plaintiff Oracle America, Inc. (“Oracle”). I am familiar with the events,  
5 pleadings and discovery in this action and, if called upon as a witness, I could and would testify  
6 competently to the matters stated herein of my own personal knowledge. I submit this declaration  
7 in support of Oracle’s Rule 59 Motion For A New Trial.

8 2. Attached as Exhibit A is a true and correct copy of a post from Google’s Chrome  
9 OS Blog, dated May 19, 2016, obtained from <https://chrome.googleblog.com/>.

10 3. Attached as Exhibit B is a true and correct copy of a Google website with a list of  
11 laptop computers, desktop computers, and other devices that will support Android Apps through a  
12 combined Android Marshmallow/Chrome Operating System, obtained from  
13 [https://sites.google.com/a/chromium.org/dev/chromium-os/chrome-os-systems-supporting-](https://sites.google.com/a/chromium.org/dev/chromium-os/chrome-os-systems-supporting-android-apps?rd=1)  
14 [android-apps?rd=1](https://sites.google.com/a/chromium.org/dev/chromium-os/chrome-os-systems-supporting-android-apps?rd=1).

15 4. Attached as Exhibit C is a true and correct copy of an Ars Technica article entitled  
16 “The Play Store comes to Chrome OS, but not in the way we were expecting,” dated May 19,  
17 2016, obtained from [http://arstechnica.com/gadgets/2016/05/the-play-store-comes-to-chrome-os-](http://arstechnica.com/gadgets/2016/05/the-play-store-comes-to-chrome-os-but-not-the-way-we-were-expecting/)  
18 [but-not-the-way-we-were-expecting/](http://arstechnica.com/gadgets/2016/05/the-play-store-comes-to-chrome-os-but-not-the-way-we-were-expecting/).

19 5. Attached as Exhibit D is a true and correct copy of an Engadget article entitled  
20 “Android apps are now available on Chrome OS,” dated June 17, 2016, obtained from  
21 <https://www.engadget.com/2016/06/17/android-apps-are-now-available-on-chrome-os/>.

22 6. Attached as Exhibit E is a true and correct copy of the May 19, 2016 Google I/O  
23 Conference schedule, obtained from <https://events.google.com/io2016/schedule#day2>.

24 7. Attached as Exhibit F is a true and correct copy of a video of Google’s I/O  
25 Conference announcement on May 19, 2016 of availability of the Android Google Play Store on  
26 laptops and desktop computers through a new Android Marshmallow/Chrome OS product,  
27 obtained from [https://events.google.com/io2016/schedule?sid=f7f95fa4-5b1c-e611-a517-](https://events.google.com/io2016/schedule?sid=f7f95fa4-5b1c-e611-a517-00155d5066d7#day2/f7f95fa4-5b1c-e611-a517-00155d5066d7)  
28 [00155d5066d7#day2/f7f95fa4-5b1c-e611-a517-00155d5066d7](https://events.google.com/io2016/schedule?sid=f7f95fa4-5b1c-e611-a517-00155d5066d7#day2/f7f95fa4-5b1c-e611-a517-00155d5066d7).

1           8.       Attached as Exhibit F-1 is a true and correct copy of the transcript of Exhibit F  
2 obtained from <https://www.youtube.com/watch?v=yDy1WWUdIY8>, the Youtube.com site  
3 hosting the video.

4           9.       Attached as Exhibit G is a true and correct copy of the relevant excerpts of the  
5 30(b)(6) deposition of Google employee Hiroshi Lockheimer, dated December 8, 2015, which is  
6 filed under seal pursuant to the protective order.

7           10.      Attached as Exhibit H is a true and correct copy of a Forbes article entitled  
8 “Google Pulls Google Play Store And Android Apps Into Chromebooks at #IO16,” dated May  
9 19, 2016, obtained from [http://www.forbes.com/sites/patrickmoorhead/2016/05/19/google-pulls-](http://www.forbes.com/sites/patrickmoorhead/2016/05/19/google-pulls-google-play-store-and-android-apps-into-chromebooks-at-io16/)  
10 [google-play-store-and-android-apps-into-chromebooks-at-io16/](http://www.forbes.com/sites/patrickmoorhead/2016/05/19/google-pulls-google-play-store-and-android-apps-into-chromebooks-at-io16/).

11          11.      Attached as Exhibit I is a true and correct copy of an Ars Technica article entitled  
12 “Google Play Store and “over a million apps” could be headed to Chrome OS,” dated April 24,  
13 2016.

14          12.      Attached as Exhibit J is a true and correct copy of a video of a Google I/O 2016  
15 developer information session about Marshmallow/Chrome OS dated May 19, 2016, obtained  
16 from <https://www.youtube.com/watch?v=ZLYzX0G0YKQ>.

17          13.      Attached as Exhibit J-1 is a true and correct copy of the transcript of Exhibit J  
18 obtained from <https://www.youtube.com/watch?v=ZLYzX0G0YKQ>, the Youtube.com site  
19 hosting the video.

20          14.      Attached as Exhibit J-2 is a true and correct copy of a screenshot from the Google  
21 I/O presentation attached as Ex. J from 0:51 showing the expected market impact of Chrome OS.

22          15.      Attached as Exhibit J-3 is a true and correct copy of a screenshot from the Google  
23 I/O presentation attached as Ex. J from 1:00 showing exemplar personal computers that support  
24 Chrome OS.

25          16.      Attached as Exhibit K is a true and correct copy of a Techcrunch Article entitled  
26 “Google’s Chrome OS will soon be able to run all Android apps,” dated May 19, 2016, obtained  
27 from [https://techcrunch.com/2016/05/19/googles-chrome-os-will-soon-be-able-to-run-all-](https://techcrunch.com/2016/05/19/googles-chrome-os-will-soon-be-able-to-run-all-android-apps/)  
28 [android-apps/](https://techcrunch.com/2016/05/19/googles-chrome-os-will-soon-be-able-to-run-all-android-apps/).

1           17. Attached as Exhibit L is a true and correct copy of the relevant excerpts of Volume  
2 I of the 30(b)(6) deposition of Google employee Felix Lin, dated December 14, 2015, filed under  
3 seal pursuant to the protective order.

4           18. Attached as Exhibit M is a true and correct copy of the relevant excerpts of  
5 Volume II of the 30(b)(6) deposition of Google employee Felix Lin, dated December 18, 2015,  
6 filed under seal pursuant to the protective order.

7           19. Attached as Exhibit N is a true and correct copy of the relevant excerpts of  
8 Google's First Supplemental Responses and Objections to Oracle's Second Set of Requests for  
9 Admission, dated October 15, 2015, filed under seal pursuant to the protective order.

10          20. Attached as Exhibit O is a true and correct copy of the relevant excerpts of  
11 Google's Responses and Objections to Oracle's Requests For Admission, Set Three, dated  
12 December 4, 2015, filed under seal pursuant to the protective order.

13          21. Attached as Exhibit P is a true and correct copy of the relevant excerpts of  
14 Google's Third Supplemental Responses and Objections to Plaintiff's Interrogatories, Set 5 (Nos.  
15 26-37), dated December 16, 2015, filed under seal pursuant to the protective order.

16          22. Attached as Exhibit Q is a true and correct copy of Oracle's Requests for  
17 Production To Google, Inc., Set Eleven, dated November 4, 2015.

18          23. Attached as Exhibit R is a true and correct copy of Oracle's Notice of Deposition  
19 of Google Inc., Pursuant to Fed. R. Civ. P. 30(b)(6), dated November 2, 2015.

20          24. Attached as Exhibit S is a true and correct copy of Lin Deposition Exhibit 5096, an  
21 email chain from Kan Liu to Dave Burke and Chrome OS Team, dated April 3, 2015, filed under  
22 seal pursuant to the protective order. Exhibit S was also marked as Trial Exhibit 6260.

23          25. Attached as Exhibit T is a true and correct copy of Lin Deposition Exhibit 5090, a  
24 Wall Street Journal Article entitled "Alphabet's Google to Fold Chrome Operating System Into  
25 Android," dated October 29, 2015. Exhibit T was also marked as Trial Exhibit 6118.

26          26. Attached as Exhibit U is a true and correct copy of a Google blog post entitled  
27 "Chrome OS is here to stay," dated November 2, 2015.

28          27. Attached as Exhibit V is a true and correct copy of the relevant excerpts of the

1 30(b)(6) deposition of Anwar Ghuloum, dated December 9, 2015, filed under seal pursuant to the  
2 protective order.

3 28. Attached as Exhibit W is a true and correct copy of the relevant excerpts of the  
4 deposition of Henrik Stahl, dated March 31, 2016.

5 29. Attached as Exhibit X is a true and correct copy of the relevant excerpts of the  
6 deposition of Mike Ringhofer, dated March 31, 2016.

7 30. Attached as Exhibit Y is a true and correct copy of a presentation dated July 9,  
8 2015, produced in this litigation and beginning with Bates number GOOG-0061180, filed under  
9 seal pursuant to the protective order.

10 31. Attached as Exhibit Z is a true and correct copy of the relevant excerpts of the  
11 deposition of Henrik Stahl, dated January 14, 2016.

12 32. Attached as Exhibit AA is a true and correct copy of a Google Presentation dated  
13 March 2014, produced in this litigation and beginning with Bates number GOOG-00268939, and  
14 filed under seal pursuant to the protective order.

15 33. Attached as Exhibit BB is a true and correct copy of a presentation dated July  
16 2015, produced in this litigation and beginning at Bates number GOOG-00607957, and filed  
17 under seal pursuant to the protective order.

18 34. Attached as Exhibit CC is a true and correct copy of the relevant excerpts of the  
19 deposition of Georges Saab, dated December 16, 2015.

20 35. Attached as Exhibit DD is a true and correct of the relevant excerpts of the  
21 deposition of Terrence Barr, dated December 9, 2015.

22 36. Attached as Exhibit EE is a true and correct of a video of the Keynote from  
23 Google's I/O 2016 conference, dated May 18, 2016, obtained from  
24 [https://events.google.com/io2016/schedule?sid=\\_\\_keynote\\_\\_#day1/\\_\\_keynote\\_\\_](https://events.google.com/io2016/schedule?sid=__keynote__#day1/__keynote__).

25 37. Attached as Exhibit FF is a true and correct copy of the Third Expert Report of  
26 Professor Douglas C. Schmidt, Ph.D., dated February 29, 2016, filed under seal pursuant to the  
27 protective order.

28 38. Attached as Exhibit GG is a true and correct copy of a demonstrative slide that was

1 prepared for Oracle's opening presentation but was not used.

2 39. Attached as Exhibit HH is a true and correct copy of the Third Amended Initial  
3 Disclosure Statement of Google Inc., dated August 26, 2011.

4 40. Attached as Exhibit II is a true and correct copy of Oracle America, Inc.'s Second  
5 Amended Initial Disclosures, dated August 10, 2011.

6 41. Attached as Exhibit JJ is a true and correct copy of the unredacted version of the  
7 document admitted as Trial Exhibit 5046, an email chain from sa3ruby@gmail.com to  
8 members@apache.org Re: and what if we accepted the damn FOU restriction?, dated April 17,  
9 2008.

10 42. Attached as Exhibit KK is a true and correct copies of charts of Google's revenue  
11 sharing arrangements with partners, filed under seal pursuant to the protective order.

12 43. Attached as Exhibit LL is a true and correct copy of an email from Scott  
13 Stillabower to Jim Lipkis and David Hofert, dated February 7, 2012, produced in this litigation  
14 and beginning at Bates number OAGOOOGLE2000062898.

15 44. Attached as Exhibit MM is a true and correct copy of the relevant excerpts of the  
16 deposition of Donald Smith, dated April 6, 2016.

17 45. Attached as Exhibit NN is a true and correct copy of the relevant excerpts of the  
18 deposition of David K. Hofert, dated December 1, 2015.

19 46. Attached as Exhibit OO is a true and correct copy of a video of the Keynote from  
20 Google's I/O 2014 conference, dated June 25, 2014, obtained from  
21 <https://www.google.com/events/io#wtLJPvx7-ys>.

22 47. Attached as Exhibit OO-1 is a true and correct copy of the transcript of Exhibit OO  
23 obtained from <https://www.youtube.com/watch?v=wtLJPvx7-ys>, the Youtube.com site hosting  
24 the video.

25 48. Attached as Exhibit PP is a true and correct copy of the relevant excerpts of the  
26 deposition of James Kolotouros dated January 26, 2016, which is filed under seal pursuant to the  
27 protective order.

28 49. Attached as Exhibit QQ is a true and correct copy of the relevant excerpts of the

1 deposition of Mike Ringhofer, dated December 2, 2015.

2 50. Attached is a true and correct copy of admitted Trial Exhibit 43.1, the Android  
3 stack diagram.

4 51. Attached is a true and correct copy of admitted Trial Exhibit 2237, Oracle  
5 Corporation Acquisition of Sole Control Over Sun Microsystems, Inc., dated July 30, 2009.

6 52. Attached is a true and correct copy of marked Trial Exhibit 2449, a presentation  
7 entitled "Android, OC Quarterly Review - Q1 2011," dated May 3, 2011, filed under seal  
8 pursuant to the protective order.

9 53. Attached is a true and correct copy of marked Trial Exhibit 4104, a presentation  
10 entitled "Introduction to Android," dated May 2015, filed under seal pursuant to the protective  
11 order.

12 54. Attached is a true and correct copy of marked Trial Exhibit 5059, a presentation  
13 entitled "FY12 Java Strategic Planning Review: Americas Region," dated 2011.

14 55. Attached is a true and correct copy of marked Trial Exhibit 5060, an email from  
15 Charles Shih to Geoffrey Morton, Jongin Lee, David Hofert, et al. re WWA&C JAPAC SC  
16 Weekly Report - Week ending April 28, 2012, dated May 3, 2012.

17 56. Attached is a true and correct copy of marked Trial Exhibit 5062, an email from  
18 Kyunghan Kim to Jerry Lee re Fwd: Korea Wearable Market status - Samsung/LG, dated March  
19 12, 2014.

20 57. Attached is a true and correct copy of marked Trial Exhibit 5063, and email chain  
21 from Gordon Tsang to Dave Hofert, Veronique Alaton re Status update on Java BD Leads and  
22 Opportunities, dated April 9, 2014.

23 58. Attached is a true and correct copy of marked Trial Exhibit 5064, an email chain  
24 from Nori Shibuya to Dave Hofert, Scott Armour re Automotive Telematics and IoT platform,  
25 dated May 19, 2014.

26 59. Attached is a true and correct copy of marked Trial Exhibit 5295, an Oracle/Sun  
27 European Commission Reply re document titled "Questions and comments on the SECOND draft  
28 Form CO of 24 July 2009," dated July 30, 2009.



1           60.     Attached is a true and correct copy of marked Trial Exhibit 5627, an email from  
2     Jerry Lee to Byunghwan Lim re (Foreign language), dated June 8, 2013.

3           61.     Attached is a true and correct copy of marked Trial Exhibit 5628, an email from  
4     Kevin Smith to Paul Gallagher re Meeting request- raspberry pi/ Java/ Greenfoot, dated April 23,  
5     2012.

6           62.     Attached is a true and correct copy of marked Trial Exhibit 5632, an email from  
7     Gen Shimada to Jongin Lee, Charles Shih re Meeting Minutes- Nikon, dated September 21, 2012.

8           63.     Attached is a true and correct copy of marked Trial Exhibit 5634, an email from  
9     Rupindera Rai to David Karl Hofert re Timeline of discussions with Alticast, dated June 22,  
10    2012.

11          64.     Attached is a true and correct copy of marked Trial Exhibit 5635, an email from  
12    Charles Shih to Scott Amour, Dave Hofert re Seeking approval- Fwd: LGE small IoT devices  
13    FPE opportunity, dated March 7, 2015.

14          65.     Attached is a true and correct copy of marked Trial Exhibit 5637, an Oracle  
15    Executive Briefing Document, dated September 25, 2013.

16          66.     Attached is a true and correct copy of marked Trial Exhibit 5642, an Oracle  
17    presentation entitled "Java Market Analysis," dated October 2012.

18          67.     Attached is a true and correct copy of marked Trial Exhibit 5840, an email chain  
19    from Rupindera Rai to Jennifer Yonemitsu, Dave Hofert re About ipanel, with attachments, dated  
20    February 23, 2012.

21          68.     Attached is a true and correct copy of marked Trial Exhibit 5844, an Oracle  
22    presentation entitled "Go to market activites," dated February 25, 2014.

23          69.     Attached is a true and correct copy of marked Trial Exhibit 5850, an email chain  
24    from Paul Gallagher to Dave Hofert re NTT Overview, dated February 14, 2012.

25          70.     Attached is a true and correct copy of marked Trial Exhibit 5886, an email chain  
26    from Jennifer Yonemitsu to David Hofert re Important: Customer feedback on the major China  
27    M2M opportunity discussed at JBR-Fwd: JDR request for a major opportunity with Gaia, dated  
28    July 17, 2012.



1           71.     Attached is a true and correct copy of marked Trial Exhibit 5887, an email from Y.  
2 Shani and L. Desborough, F. Tournier, et al. attaching multiple attachments including a 2011  
3 Oracle presentation entitled “Qualcomm workshop- May 24th San Diego, CA.”

4           72.     Attached is a true and correct copy of marked Trial Exhibit 5893, an email chain  
5 from Paul Gallagher to Dave Hofert re Input to PM and Dev, dated February 9, 2012.

6           73.     Attached is a true and correct copy of marked Trial Exhibit 5894, an email from  
7 David Hofert to Dave Hofert re NOTES: Reid Oakes call, dated February 6, 2012.

8           74.     Attached is a true and correct copy of marked Trial Exhibit 5961, an email from I.  
9 Guner to S. Catz re FY 11 Budget Template\_Embedded attaching multiples attachments to  
10 include Oracle PowerPoint presentation entitled “Embedded- Oracle & Sun: FY11 Budget  
11 Review,” dated April 2, 2010.

12           75.     Attached is a true and correct copy of marked Trial Exhibit 6431, an email from C.  
13 Lucke to N. Civjan re Mark Hurd Preso attaching various documents to include Oracle  
14 PowerPoint presentation entitled “Worldwide Alliances & Channels and Embedded Sales- Java  
15 Business Review,” dated December 17, 2010.

16           76.     Attached is a true and correct copy of marked Trial Exhibit 6458, Oracle’s  
17 Supplemental Rule 26(a)(2)(c) disclosure, dated March 25, 2016.

18           77.     Attached is a true and correct copy of marked Trial Exhibit 6470, an email from E.  
19 Washington to N. Civjan and V. Gupta re Fwd: NEED RESPONSE: Product Roadmap for Neal's  
20 staff-ESGU Java FY10/FY11 Corp Dev & Global GTM M&A Review - presentation for 6th July  
21 call]], with attachment, dated August 3, 2010.

22           78.     Attached is a true and correct copy of marked Trial Exhibit 6905, a document  
23 titled “Java Design Win Business Plan Version 2”- Exec. Summary, dated January 30, 2015.

24           79.     Attached is a true and correct copy of admitted Trial Exhibit 7237, a Java ME  
25 Business: Wireless Industry Overview, by Alan Brenner, dated September 29, 2006.

26           80.     Attached is a true and correct copy of marked Trial Exhibit 9179, an Oracle  
27 presentation titled Java Source Licensee Update, dated July 20, 2016.

28           I declare under penalty of perjury under the laws of the United States the foregoing is true

1 and correct.

2 Executed this 6th day of July, 2016, at New York, NY.

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6 MATTHEW L. BUSH  
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